FILE COPY

No. 22

In the Supreme Court of the United States

October Term, 1934

THE UNITED STATES OF AMERICA, APPELLANT

v.

FRED HASTINGS

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

STATEMENT AS TO JURISDICTION

In the District Court of the United States in and for the Delta Division of the Northern District of Mississippi

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No. 2671

UNITED STATES OF AMERICA

v.

FRED HASTINGS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause:

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by Title 18, Section 682, of the United States Code, otherwise known as the "Criminal Appeals Act", and by Section 345, Title 28, of the United States Code.

B. The statute of the United States the validity and construction of which is involved herein is Section 270, of Title 7, of the United States Code, which section reads as follows:

> Every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agricul-

ture, or his designated representative, under this chapter, or who shall violate or fail to comply with any provision of Section 250 of this chapter, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this chapter or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $10,000, or double the value of the products involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture, for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this chapter, or who shall classify, grade, or weigh

> fraudulently, any agricultural products stored or to be stored under the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not more than $500.00, or imprisoned for not more than six months, or both, in the discretion of the court.

C. The judgment of the District Court sought to be reviewed was entered on February 4, 1935, and an application for appeal was filed on March 4, 1935, and is presented to the District Court herewith, to wit: On this the 4th day of March, 1935.

The indictment in this case is in three separate counts, each of which said counts is based upon Section 270, Title 7, of the United States Code, and charges in substance that the defendants, Fred Hastings and J. B. Barner, on a day named, knowingly, wilfully, and unlawfully removed and stole, without any lawful authority and contrary to the provisions of the United States Warehouse Act and regulations promulgated thereunder, from a warehouse licensed under the United States Warehouse Act, certain agricultural products stored therein, for which licensed warehouse receipts had been issued. A demurrer to the indictment was filed by the defendant Hastings, and at the hearing thereof the court construed Section 207, Title 7, of the United States Code so as to require that an indictment under this section should allege that the property removed and stolen was the property of some person, and the name of that person, that there was an intent to defraud the owner thereof, and that it was necessary to

allege that the property was of some specific value. The court sustained the demurrer on the ground that the indictment did not charge that the property alleged to have been removed and stolen was the property of any person, and failed to allege the name of the owner and an intent to defraud the owner, and because the indictment did not allege the value of the property alleged to have been removed and stolen or that the property was of any value. In sustaining the demurrer the court further held that Section 270, Title 7, of the United States Code, being the section under which the indictment was drawn, is unconstitutional, in that, Congress was without authority under the Constitution to declare it an offense against the laws of the United States to remove agricultural products from a federal licensed warehouse as alleged in the indictment, and as defined in said section.

The following decisions are believed to sustain the jurisdiction of the Supreme Court:

U. S. v. *Heinze,* 218 U. S. 532.
U. S. v. *Stevenson,* 215 U. S. 190.
U. S. v. *Bitty,* 208 U. S. 393.
U. S. v. *Keitel,* 211 U. S. 370.

Respectfully submitted.

LESTER G. FANT,
United States Attorney,
Northern District of Mississippi.

MARCH 4, 1935.

Filed this 4th day of March, 1935.

HUBERT D. STEPHENS, Jr. Clerk.

By M. A. COOK, *Deputy Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1935